IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVI APPELLATE SIDE JURISDICTION

WRIT PETITION NO 8l72 OF 2005

Mr.Munir A Khan ...Petitioner

vs

The Jijamata Mahila Sah Bank
Pune and ors. ... respondents

Mr. J Shekhar for J Shekhar and Co for petitioner

Mr. V G Muzumdar for respondent no.l

Mrs V S Mhaispurkar AGP for State

CORAM: S.U.KAMDAR J.

Dated 5.l2.2005

P.C:

l. The present petition is challenging the order dated 8.ll.2005 passed by the 8th Joint Civil Judge, Senior Division, Pune by which he has held that the civil court has no jurisdiction to try the said suit and directed the plaintiff to adopt appropriate proceedings before the Cooperative Court under the provisions of the Maharashtra Coop Societies Act, l960. Some of the relevant facts of the present case briefly narrated are as under:

2. The respondent no.l is a bank who has advanced certain amount to the respondent no. 3. The respondent no. 3 has mortgaged suit property with the bank. Because of non payment of the amount the

bank has filed application for recovery certificate under section l0l of the MCS Act and sought to recover the amount lent and advanced by the bank being Rs.4 lacs. It is the case of the plaintiff that though he sold the property to the borrower on l2.9.2002 but final sale deed was not executed. It is therefore contended that the mortgage created by the borrower on l0.3.2003 in favour of the bank is invalid in law. However, he further contended that he has cancelled the agreement by a cancellation agreement dated 25.l.2005 entered into between the plaintiff and the borrower herein after the recovery certificate was issued under section l0l of the MCS Act. Now on the basis of the said cancellation of the agreement he has filed the present suit claiming that he is the original owner of the property, mortgage is void ab-initio and the recovery certificate issued by the Coop Court in favour of the respondent must be set aside.

3. The trial court has held that in view of the fact that the recovery certificate and the mortgage executed in favour by the borrower in favour of the Coop Bank have been challenged and that the petitioner is seeking right title and interest by virtue of the cancellation of the agreement for sale dated 25.l.2005 which was entered into by and

between him and the borrower, petitioner is deemed to be claiming through the said borrower, his right title and interest in the said property and since the property was mortgaged with the bank and the recovery certificate is issued on the basis of the said mortgage itself, the said cause of action is touching the business of the society and therefore the Coop Court alone would have jurisdiction under section 9l of the MCS Act by way of a dispute which has been raised by the petitioner. In any case, in my opinion, there is no error in the order passed by the trial court. Firstly the claim of the petitioner is based on the cancellation of the agreement which was entered into by and between the plaintiff and the borrower. The cancellation agreement is of 25.l.2005. There was already a mortgage executed by the respondent no.3 in favour of the bank and and the bank has claimed the amount on the basis of the said mortgage. Once the petitioner is claiming his right title and interest in the property on the basis of cancellation agreement in favour of the respondent no. 3, the issue would be clearly required to be decided by the Coop Court that whether there is valid recovery certificate issued or that the mortgage in favour of the bank was legal or valid.

. In that view of the matter there is no need to

interfere with the order passed by the trial court. Petition is dismissed accordingly with no order as to costs.